

**Suspend the Rules And Pass the Bill, H.R. 3675, with Amendments**

**(The amendments strike all after the enacting clause and insert a new text and a new title)**

113<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3675

To amend the Communications Act of 1934 to provide for greater transparency and efficiency in the procedures followed by the Federal Communications Commission.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 9, 2013

Mr. WALDEN (for himself and Mr. KINZINGER of Illinois) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Communications Act of 1934 to provide for greater transparency and efficiency in the procedures followed by the Federal Communications Commission.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Communica-  
5 tions Commission Process Reform Act of 2013”.

1 **SEC. 2. FCC PROCESS REFORM.**

2 (a) IN GENERAL.—Title I of the Communications Act  
3 of 1934 (47 U.S.C. 151 et seq.) is amended by inserting  
4 after section 12 the following new section:

5 **“SEC. 13. TRANSPARENCY AND EFFICIENCY.**

6 “(a) INITIAL RULEMAKING AND INQUIRY.—

7 “(1) RULEMAKING.—Not later than 1 year  
8 after the date of the enactment of the Federal Com-  
9 munications Commission Process Reform Act of  
10 2013, the Commission shall complete a rulemaking  
11 proceeding and adopt procedural changes to its rules  
12 to maximize opportunities for public participation  
13 and efficient decisionmaking.

14 “(2) REQUIREMENTS FOR RULEMAKING.—The  
15 rules adopted under paragraph (1) shall—

16 “(A) set minimum comment periods for  
17 comment and reply comment, subject to a de-  
18 termination by the Commission that good cause  
19 exists for departing from such minimum com-  
20 ment periods, for—

21 “(i) significant regulatory actions, as  
22 defined in Executive Order 12866; and

23 “(ii) all other rulemaking proceedings;

24 “(B) establish policies concerning the sub-  
25 mission of extensive new comments, data, or re-  
26 ports towards the end of the comment period;

1           “(C) establish policies regarding treatment  
2 of comments, ex parte communications, and  
3 data or reports (including statistical reports  
4 and reports to Congress) submitted after the  
5 comment period to ensure that the public has  
6 adequate notice of and opportunity to respond  
7 to such submissions before the Commission re-  
8 lies on such submissions in any order, decision,  
9 report, or action;

10           “(D) establish procedures for publishing  
11 the status of open rulemaking proceedings and  
12 proposed orders, decisions, reports, or actions  
13 on circulation for review by the Commissioners,  
14 including which Commissioners have not cast a  
15 vote on an order, decision, report, or action that  
16 has been on circulation for more than 60 days;

17           “(E) establish deadlines (relative to the  
18 date of filing) for—

19           “(i) in the case of a petition for a de-  
20 claratory ruling under section 1.2 of title  
21 47, Code of Federal Regulations, issuing a  
22 public notice of such petition;

23           “(ii) in the case of a petition for rule-  
24 making under section 1.401 of such title,

1 issuing a public notice of such petition;  
2 and

3 “(iii) in the case of a petition for re-  
4 consideration under section 1.106 or 1.429  
5 of such title or an application for review  
6 under section 1.115 of such title, issuing a  
7 public notice of a decision on the petition  
8 or application by the Commission or under  
9 delegated authority (as the case may be);

10 “(F) establish guidelines (relative to the  
11 date of filing) for the disposition of petitions  
12 filed under section 1.2 of such title;

13 “(G) establish procedures for the inclusion  
14 of the specific language of the proposed rule or  
15 the proposed amendment of an existing rule in  
16 a notice of proposed rulemaking; and

17 “(H) require notices of proposed rule-  
18 making and orders adopting a rule or amending  
19 an existing rule that—

20 “(i) create (or propose to create) a  
21 program activity to contain performance  
22 measures for evaluating the effectiveness of  
23 the program activity; and

1                   “(ii) substantially change (or propose  
2                   to substantially change) a program activity  
3                   to contain—

4                   “(I) performance measures for  
5                   evaluating the effectiveness of the pro-  
6                   gram activity as changed (or proposed  
7                   to be changed); or

8                   “(II) a finding that existing per-  
9                   formance measures will effectively  
10                  evaluate the program activity as  
11                  changed (or proposed to be changed).

12                  “(3) INQUIRY.—Not later than 1 year after the  
13                  date of the enactment of the Federal Communica-  
14                  tions Commission Process Reform Act of 2013, the  
15                  Commission shall complete an inquiry to seek public  
16                  comment on whether and how the Commission  
17                  should—

18                  “(A) establish procedures for allowing a bi-  
19                  partisan majority of Commissioners to place an  
20                  order, decision, report, or action on the agenda  
21                  of an open meeting;

22                  “(B) establish procedures for informing all  
23                  Commissioners of a reasonable number of op-  
24                  tions available to the Commission for resolving

1 a petition, complaint, application, rulemaking,  
2 or other proceeding;

3 “(C) establish procedures for ensuring that  
4 all Commissioners have adequate time, prior to  
5 being required to decide a petition, complaint,  
6 application, rulemaking, or other proceeding  
7 (including at a meeting held pursuant to section  
8 5(d)), to review the proposed Commission deci-  
9 sion document, including the specific language  
10 of any proposed rule or any proposed amend-  
11 ment of an existing rule;

12 “(D) establish procedures for publishing  
13 the text of agenda items to be voted on at an  
14 open meeting in advance of such meeting so  
15 that the public has the opportunity to read the  
16 text before a vote is taken;

17 “(E) establish deadlines (relative to the  
18 date of filing) for disposition of applications for  
19 a license under section 1.913 of title 47, Code  
20 of Federal Regulations;

21 “(F) assign resources needed in order to  
22 meet the deadlines described in subparagraph  
23 (E), including whether the Commission’s ability  
24 to meet such deadlines would be enhanced by

1 assessing a fee from applicants for such a li-  
2 cense; and

3 “(G) publish each order, decision, report,  
4 or action not later than 30 days after the date  
5 of the adoption of such order, decision, report,  
6 or action.

7 “(4) DATA FOR PERFORMANCE MEASURES.—  
8 The Commission shall develop a performance meas-  
9 ure or proposed performance measure required by  
10 this subsection to rely, where possible, on data al-  
11 ready collected by the Commission.

12 “(b) PERIODIC REVIEW.—On the date that is 5 years  
13 after the completion of the rulemaking proceeding under  
14 subsection (a)(1), and every 5 years thereafter, the Com-  
15 mission shall initiate a new rulemaking proceeding to con-  
16 tinue to consider such procedural changes to its rules as  
17 may be in the public interest to maximize opportunities  
18 for public participation and efficient decisionmaking.

19 “(c) NONPUBLIC COLLABORATIVE DISCUSSIONS.—

20 “(1) IN GENERAL.—Notwithstanding section  
21 552b of title 5, United States Code, a bipartisan  
22 majority of Commissioners may hold a meeting that  
23 is closed to the public to discuss official business  
24 if—

1           “(A) a vote or any other agency action is  
2 not taken at such meeting;

3           “(B) each person present at such meeting  
4 is a Commissioner, an employee of the Commis-  
5 sion, a member of a joint board or conference  
6 established under section 410, or a person on  
7 the staff of such a joint board or conference or  
8 of a member of such a joint board or con-  
9 ference; and

10           “(C) an attorney from the Office of Gen-  
11 eral Counsel of the Commission is present at  
12 such meeting.

13           “(2) DISCLOSURE OF NONPUBLIC COLLABO-  
14 RATIVE DISCUSSIONS.—Not later than 2 business  
15 days after the conclusion of a meeting held under  
16 paragraph (1), the Commission shall publish a dis-  
17 closure of such meeting, including—

18           “(A) a list of the persons who attended  
19 such meeting; and

20           “(B) a summary of the matters discussed  
21 at such meeting, except for such matters as the  
22 Commission determines may be withheld under  
23 section 552b(c) of title 5, United States Code.

24           “(3) PRESERVATION OF OPEN MEETINGS RE-  
25 QUIREMENTS FOR AGENCY ACTION.—Nothing in this

1 subsection shall limit the applicability of section  
2 552b of title 5, United States Code, with respect to  
3 a meeting of Commissioners other than that de-  
4 scribed in paragraph (1).

5 “(d) ACCESS TO CERTAIN INFORMATION ON COMMIS-  
6 SION’S WEBSITE.—The Commission shall provide direct  
7 access from the homepage of its website to—

8 “(1) detailed information regarding—

9 “(A) the budget of the Commission for the  
10 current fiscal year;

11 “(B) the appropriations for the Commis-  
12 sion for such fiscal year; and

13 “(C) the total number of full-time equiva-  
14 lent employees of the Commission; and

15 “(2) the performance plan most recently made  
16 available by the Commission under section 1115(b)  
17 of title 31, United States Code.

18 “(e) FEDERAL REGISTER PUBLICATION.—

19 “(1) IN GENERAL.—In the case of any docu-  
20 ment adopted by the Commission that the Commis-  
21 sion is required, under any provision of law, to pub-  
22 lish in the Federal Register, the Commission shall,  
23 not later than the date described in paragraph (2),  
24 complete all Commission actions necessary for such  
25 document to be so published.

1           “(2) DATE DESCRIBED.—The date described in  
2 this paragraph is the earlier of—

3           “(A) the day that is 45 days after the date  
4 of the release of the document; or

5           “(B) the day by which such actions must  
6 be completed to comply with any deadline under  
7 any other provision of law.

8           “(3) NO EFFECT ON DEADLINES FOR PUBLICA-  
9 TION IN OTHER FORM.—In the case of a deadline  
10 that does not specify that the form of publication is  
11 publication in the Federal Register, the Commission  
12 may comply with such deadline by publishing the  
13 document in another form. Such other form of publi-  
14 cation does not relieve the Commission of any Fed-  
15 eral Register publication requirement applicable to  
16 such document, including the requirement of para-  
17 graph (1).

18           “(f) CONSUMER COMPLAINT DATABASE.—

19           “(1) IN GENERAL.—In evaluating and proc-  
20 essing consumer complaints, the Commission shall  
21 present information about such complaints in a pub-  
22 licly available, searchable database on its website  
23 that—

24           “(A) facilitates easy use by consumers; and

1           “(B) to the extent practicable, is sortable  
2           and accessible by—

3                   “(i) the date of the filing of the com-  
4           plaint;

5                   “(ii) the topic of the complaint;

6                   “(iii) the party complained of; and

7                   “(iv) other elements that the Commis-  
8           sion considers in the public interest.

9           “(2) DUPLICATIVE COMPLAINTS.—In the case  
10          of multiple complaints arising from the same alleged  
11          misconduct, the Commission shall be required to in-  
12          clude only information concerning one such com-  
13          plaint in the database described in paragraph (1).

14          “(g) FORM OF PUBLICATION.—

15                  “(1) IN GENERAL.—In complying with a re-  
16          quirement of this section to publish a document, the  
17          Commission shall publish such document on its  
18          website, in addition to publishing such document in  
19          any other form that the Commission is required to  
20          use or is permitted to and chooses to use.

21                  “(2) EXCEPTION.—The Commission shall by  
22          rule establish procedures for redacting documents  
23          required to be published by this section so that the  
24          published versions of such documents do not con-  
25          tain—

1           “(A) information the publication of which  
2           would be detrimental to national security,  
3           homeland security, law enforcement, or public  
4           safety; or

5           “(B) information that is proprietary or  
6           confidential.

7           “(h) TRANSPARENCY RELATING TO PERFORMANCE  
8 IN MEETING FOIA REQUIREMENTS.—The Commission  
9 shall take additional steps to inform the public about its  
10 performance and efficiency in meeting the disclosure and  
11 other requirements of section 552 of title 5, United States  
12 Code (commonly referred to as the Freedom of Informa-  
13 tion Act), including by doing the following:

14           “(1) Publishing on the Commission’s website  
15           the Commission’s logs for tracking, responding to,  
16           and managing requests submitted under such sec-  
17           tion, including the Commission’s fee estimates, fee  
18           categories, and fee request determinations.

19           “(2) Releasing to the public all decisions made  
20           by the Commission (including decisions made by the  
21           Commission’s Bureaus and Offices) granting or de-  
22           nying requests filed under such section, including  
23           any such decisions pertaining to the estimate and  
24           application of fees assessed under such section.

1           “(3) Publishing on the Commission’s website  
2           electronic copies of documents released under such  
3           section.

4           “(4) Presenting information about the Commis-  
5           sion’s handling of requests under such section in the  
6           Commission’s annual budget estimates submitted to  
7           Congress and the Commission’s annual performance  
8           and financial reports. Such information shall include  
9           the number of requests under such section the Com-  
10          mission received in the most recent fiscal year, the  
11          number of such requests granted and denied, a com-  
12          parison of the Commission’s processing of such re-  
13          quests over at least the previous 3 fiscal years, and  
14          a comparison of the Commission’s results with the  
15          most recent average for the United States Govern-  
16          ment as published on [www.foia.gov](http://www.foia.gov).

17          “(i) PROMPT RELEASE OF STATISTICAL REPORTS  
18          AND REPORTS TO CONGRESS.—Not later than January  
19          15th of each year, the Commission shall identify, catalog,  
20          and publish an anticipated release schedule for all statis-  
21          tical reports and reports to Congress that are regularly  
22          or intermittently released by the Commission and will be  
23          released during such year.

24          “(j) ANNUAL SCORECARD REPORTS.—

1           “(1) IN GENERAL.—For the 1-year period be-  
2           ginning on January 1st of each year, the Commis-  
3           sion shall prepare a report on the performance of  
4           the Commission in conducting its proceedings and  
5           meeting the deadlines established under subsection  
6           (a)(2)(E) and the guidelines established under sub-  
7           section (a)(2)(F).

8           “(2) CONTENTS.—Each report required by  
9           paragraph (1) shall contain detailed statistics on  
10          such performance, including, with respect to each  
11          Bureau of the Commission—

12                 “(A) with respect to each type of filing  
13                 specified in subsection (a)(2)(E) or (a)(2)(F)—

14                         “(i) the number of filings that were  
15                         pending on the last day of the period cov-  
16                         ered by such report;

17                         “(ii) the number of filings described  
18                         in clause (i) for which each applicable  
19                         deadline or guideline established under  
20                         such subsection was not met and the aver-  
21                         age length of time such filings have been  
22                         pending; and

23                         “(iii) for filings that were resolved  
24                         during such period, the average time be-  
25                         tween initiation and resolution and the

1 percentage for which each applicable dead-  
2 line or guideline established under such  
3 subsection was met;

4 “(B) with respect to proceedings before an  
5 administrative law judge—

6 “(i) the number of such proceedings  
7 completed during such period; and

8 “(ii) the number of such proceedings  
9 pending on the last day of such period; and

10 “(C) the number of independent studies or  
11 analyses published by the Commission during  
12 such period.

13 “(3) PUBLICATION AND SUBMISSION.—The  
14 Commission shall publish and submit to the Com-  
15 mittee on Energy and Commerce of the House of  
16 Representatives and the Committee on Commerce,  
17 Science, and Transportation of the Senate each re-  
18 port required by paragraph (1) not later than the  
19 date that is 30 days after the last day of the period  
20 covered by such report.

21 “(k) DEFINITIONS.—In this section:

22 “(1) AMENDMENT.—The term ‘amendment’ in-  
23 cludes, when used with respect to an existing rule,  
24 the deletion of such rule.

1           “(2) BIPARTISAN MAJORITY.—The term ‘bipar-

2           tisan majority’ means, when used with respect to a

3           group of Commissioners, that such group—

4                   “(A) is a group of 3 or more Commis-

5                   sioners; and

6                   “(B) includes, for each political party of

7                   which any Commissioner is a member, at least

8                   1 Commissioner who is a member of such polit-

9                   ical party, and, if any Commissioner has no po-

10                  litical party affiliation, at least one unaffiliated

11                  Commissioner.

12           “(3) PERFORMANCE MEASURE.—The term ‘per-

13           formance measure’ means an objective and quantifi-

14           able outcome measure or output measure (as such

15           terms are defined in section 1115 of title 31, United

16           States Code).

17           “(4) PROGRAM ACTIVITY.—The term ‘program

18           activity’ has the meaning given such term in section

19           1115 of title 31, United States Code, except that

20           such term also includes any annual collection or dis-

21           tribution or related series of collections or distribu-

22           tions by the Commission of an amount that is great-

23           er than or equal to \$100,000,000.

24           “(5) OTHER DEFINITIONS.—The terms ‘agency

25           action’, ‘ex parte communication’, and ‘rule’ have

1 the meanings given such terms in section 551 of title  
2 5, United States Code.”.

3 (b) EFFECTIVE DATES AND IMPLEMENTING  
4 RULES.—

5 (1) EFFECTIVE DATES.—

6 (A) NONPUBLIC COLLABORATIVE DISCUS-  
7 SIONS.—Subsection (c) of section 13 of the  
8 Communications Act of 1934, as added by sub-  
9 section (a), shall apply beginning on the first  
10 date on which all of the procedural changes to  
11 the rules of the Federal Communications Com-  
12 mission required by subsection (a)(1) of such  
13 section have taken effect.

14 (B) SCHEDULES AND REPORTS.—Sub-  
15 sections (i) and (j) of such section 13 shall  
16 apply with respect to 2014 and any year there-  
17 after.

18 (2) RULES.—Except as otherwise provided in  
19 such section 13, the Federal Communications Com-  
20 mission shall promulgate any rules necessary to  
21 carry out such section not later than 1 year after  
22 the date of the enactment of this Act.

1 **SEC. 3. CATEGORIZATION OF TCPA INQUIRIES AND COM-**  
2 **PLAINTS IN QUARTERLY REPORT.**

3 In compiling its quarterly report with respect to in-  
4 formal consumer inquiries and complaints, the Federal  
5 Communications Commission may not categorize an in-  
6 quiry or complaint with respect to section 227 of the Com-  
7 munications Act of 1934 (47 U.S.C. 227) as being a  
8 wireline inquiry or complaint or a wireless inquiry or com-  
9 plaint unless the party whose conduct is the subject of  
10 the inquiry or complaint is a wireline carrier or a wireless  
11 carrier, respectively.

12 **SEC. 4. EFFECT ON OTHER LAWS.**

13 Nothing in this Act or the amendments made by this  
14 Act shall relieve the Federal Communications Commission  
15 from any obligations under title 5, United States Code,  
16 except where otherwise expressly provided.

17 **SEC. 5. APPLICATION OF ANTIDEFICIENCY ACT TO UNI-**  
18 **VERSAL SERVICE PROGRAM.**

19 Section 302 of Public Law 108–494 (118 Stat. 3998)  
20 is amended by striking “December 31, 2015” each place  
21 it appears and inserting “December 31, 2020”.

Amend the title so as to read: “A bill to amend the  
Communications Act of 1934 to provide for greater  
transparency and efficiency in the procedures followed by  
the Federal Communications Commission, and for other  
purposes.”.